



**TOWN OF WINTHROP
OFFICE OF THE BOARD OF APPEALS**

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Meeting Minutes March 10, 2022

March 10, 2022, meeting, Chairman Baird opened up the meeting at 6:38pm. In attendance tonight is Chairman Baird, Tom Chiudina, Irene Dwyer, John Young

Case number 26 of 2021. James and June Realty, LLC 66, Georgia drive sitting on this is as it has been myself, John Young, and Tom Chiudina. This is a continuation from our think originally was heard on November 18, 2021. We heard and continued at our January meeting to tonight. Chairman Baird explained there will be a point where the public can comment, and the Board would like to keep that at 3 minutes.

Attorney Lynds addressed the Board- Thank you, Mr. Chairman, and not a problem at all. I appreciate the board's time, and certainly the board's willingness to accommodate the special meetings that they thank you for that. For the record. I'm Richard Lynds. I represent the project proponent, representing the project proponent, or at least the owners, representatives, Peter Horanos, who's with us as well. And I will go ahead and give the updated presentation to the board.

To briefly recap the original proposal that we started with that we presented the board we were proposing to demolish the preexisting three and its structure located at 66 Shore Drive. It sits on a roughly little over 10,000 square foot lot. Our original plan was to redevelop the site with the proposed mixed use 12-unit residential building. We were also at the time proposing ground level partial retail space. And we did have a total of five off street parking spaces. That project was intended for homeownership. At the time we presented it. As the chairman mentioned, we had several meetings with the board and again, we're very appreciative of the board's time and the public's time and the comments that we heard throughout that process. We have gone back I've taken those comments into consideration and have redesigned this project. I will note for the board based upon the redesign, we felt it was prudent and appropriate to re notice this project. So public notice for this meeting had been forwarded in accordance with chapter 40A, the general laws for variances and special permits. So, I do have a copy of the updated refusal letter that was provided. And again, we had worked with the administrative staff and getting this re noticed as well. The updated project now involves the demolition of the preexisting three-unit infrastructure. We will now propose to redevelop the site with a proposed

eight unit residential with eight off street parking spaces, which is a further reduced project. We've also heard a lot of the comments that were raised not only by the board, but by the surrounding neighborhood, about the height of our building, we've now reduced it to three stories, 34 feet eight inches. And the design has also been changed dramatically, to be a little bit more consistent with the surrounding architecture that is along with Shore Drive. And we feel that this revision is consistent with the comments that we heard throughout this process. This is still proposed to meet for homeownership. So, these would be individual condominium units. I'm going to zip through these, Mr. Chairman relatively quickly, we could always come back to them for reference, but I think everybody at this point is quite familiar with the location. We again, we do have them for reference purposes. So, I can just move through those relatively quickly. Part of our process. Also, during the process that we were asked by board members to provide some additional detail and information to our plans, which we've done. One specific request was obviously to have our survey and site plan prepared, I believe Mr. Chu, Dina had asked that that be included. So, we do have our updated site plan showing all of our setbacks, as well as the proposed footprint of the revised building that we're showing. As you can see here, we do set our building back 25 feet from the rear property line, I do have a zoning table that I will go over briefly, that being compliant with the zoning code with a town bylaw with respect to dimensional regulations. I'll point out also that and again, these are all summarized in my zoning table close to the end of the presentation, we can review that. But I would point out that the existing conditions of the structure that currently sits in a lot are non-conforming with respect to the side yard and specifically the right-side yard. Mr. Chairman, members of the board, also with the front of the property. The front yard setback is also a non-conforming condition under the Town of Winthrop Zoning Bylaw. Although we don't conform with our proposed structure, and we are requesting relief, I would submit that the non-conformities that presently exist on the site are being improved. And specifically, we are moving the building further away from that right property line. So currently, I believe it's at about 1.8 feet, and we will be increasing that setback to a little over four feet on the right side of the property. In addition, we are about the same distance to the nearest point on the front property line. And again, we improve that condition on the front property as well by pushing the building back. Although it does not comply the varying setback as around that leaves out between five feet and about 17 feet because of the odd shape of the front of this lot. But I would submit that this is also consistent with the typical setback for width or Shore Drive and therefore, I believe would meet largely Empower with the spirit and intent of setbacks for front yards in that area. We've provided a little bit more detail on our site plan I get I believe Mr. Chiudina had asked us specific questions. So, we do show the dimensions of all our parking spaces, as well as the dimension of our drive aisle. As you can see here, the eight parking spaces that we're proposing are seven of them oriented as an angled parking space as well as the last the last thought is dragged straight in. So, we do show a two-foot setback buffer on the left side. And you can see the open space that will be maintained to the rear was at 25-foot setback from the building. Just a little bit more zoomed in so we can look at the actual lower level living plans. This shows the first two units on the lower level. These are intended to be a grade and therefore would be adaptable for handicapped accessibility. We also show the storage which is located to the left side of the building and those are just off in the parking areas. We can accommodate trash recycle and other materials inside of these units here for purposes of easy access for collection. As we move up the building, the second and third levels have a typical floor plan of varying sizes and orientations. You can see here the layout that we're

proposing. And then, most importantly, the revisions that we've made to the actual elevations that we are we're working with. So our front elevation, as you can see here on the left hand side of the screen, is something a little bit more typical in consistent with what appears on Winthrop Shore Drive, there are a number of buildings that do have that front balcony condition, as well as adding that pitched roof, which is something we did here and previous presentations from the surrounding areas to is to the style and design of this building. And looking at the rear elevation, you can see the various designs for the roof and the roofline. And again, this is something that we do see, typically in this neighborhood in the town of Winthrop. We also have our side elevation; this is looking at the right side. So, this would be showing both the front towards the left side of the screen and the rear, down towards the right side of the screen. And then our left elevation. Again, this is showing where the parking spaces will be located. These would be partially covered under the building. And you can see these doors off to the side that show the storage areas that we were discussing in the site plan. So, our updated refusal letter identifies a few items that are enough not in compliance with the town of Winthrop bylaws zoning ordinance. First is the noncompliance of the proposed rule with respect to the minimum front and side yard setbacks at 20 and 10 feet respectively. And we are requesting a variance for those items. And again, those are preexisting non-conforming conditions already, we would be improving those conditions by moving the building away from the right property lines as well as more towards inward towards the property creating a larger front yard condition. Permit was also denied according to the town of Winthrop bylaw use regulations for the provisions of both 1720 30 B 1712 50, 17 2830. B being a preexisting non-conforming multifamily and 17 12 50, requiring a special permit for that use, 17 12 130 table of use regulations again, requiring a special permit for this type of use, including the change from a preexisting non-conforming use to another non-conforming use with respect to the parking. We are, as I said, proposing a total of eight parking spaces. The town of Winthrop bylaws requires that there'll be at least two parking spaces per dwelling unit and therefore we would require a variance for that for that difference. Last but not least as the minimum lot with a get a preexisting condition already, you're not altering anything with respect to the lot dimensions, we're not changing a lot subdividing it or giving off any portion a lot to joining lots, and therefore that's the preexisting condition that will continue regardless, this is a just a quick summary of my relief being requested, as I just articulated through the refusal letter that was provided by the inspectional services department. With that, I'd happy to address any questions by the board public, or what have you.

Chairman Baird- I will open it to questions and comments from members of the public. Again, I ask that you keep your comments as concise as possible and try to limit them to three minutes.

Brad Fisher and I live at 70 Winthrop Shore Drive. I know we've talked a lot about the concerns that I have. So pretty much the same. You know just thinking of the density. That number of units in that 10,000 square foot lot, the height of the buildings go somewhere to what we have now, we've got now to almost twice the length, you know, at six feet long of just that massive height of that building going east to west. Yeah, it still has a concern of mine with the, our ability to get any kind of sunlight, the drainage from the rain, if there's greenery there know what's going to turn into all either hot top or rooftop. And then you know, when you look at the site plan, and the parking space that the West End,

you know, if you get a snowstorm, where's all the snow going to go. And I'm just looking at the orientation of the parking, the parking is the other concern that I have.

Kathy Jones. I live at 45 Irwin Street. I'm actually Brad Fisher's neighbor. So this condominium will be built right in my backyard. And pretty much just to shadow everything he said the main concern that it will now go the 86 feet, Will there be any landscaping and lawn because of when it does rain, it will drain into my yard, my basement. So that is a concern. The sunlight. There'll be no sunlight coming into my house, the privacy. I do appreciate that they have lowered it. I don't believe that the variance for the parking should be given eight spots is not enough. There is no parking.

Brenda Gettschall. I live on Washington Avenue. But I own 62 Shore Drive and I own 64 Shore Drive. This is the third time that I am voicing my opposition to this project.

Attorney Sean Donahue addressed the Board- Procedurally, I think this whole case is flawed. While this matters before the Board of Appeals, the Board of Appeals has jurisdiction on this case. The developer goes back to the building department, the building inspector and asked for an updated refusal letter. And I would submit at that point in time, the building inspector doesn't have the authority to issue or to deny a request for a building permit. That's in the jurisdiction of the Board of Appeals. I think that jurisdictional issue is key here. It's a third hearing. It's the third proposal on this proposal. The applicant has, as they said, gotten this updated refusal letter, and it says that they forwarded notices to abutters. I would submit that according to Mass General Laws chapter 40, a section 11. It also requires notices to go to owners of land directly opposite on any public or private street away. And when Mr. Lynds identified where those notices were afforded to I didn't mention anything about the owners of the land that's owned by the Department of Recreation, I believe the Massachusetts Department of Recreation. As they say this, it's case, I forget the case number here, case number 1626. Whatever it is, it's been it's it started back in September, it was continued till November. And now it's been continued here until March. And during this process, the developer has a say in it in obtaining an updated refusal letter, I would suggest that updated refusal letter should be stricken. It has absolutely no relevance to what this case is above this. This is a case that my opinion for what it's worth, should have been action should have been taken or the developer given the opportunity to withdraw their applications. After each of the hearings that we've had. The comments that were made in the first two hearings, was overwhelming in comparison to those who spoke in support of the proposal. Now we have this third proposal. And again, I don't believe that the building inspector had the authority to issue that refusal letter, which triggered this new plan, if you will. It's just completely mind boggling. But nevertheless, I do want to point out that without waiving any of those arguments, I just want to point out insofar as the plan goes, the proposed site plan, there are eight parking spaces that are being proposed, I would note that not all those parking space pieces have any dimensions. Related to them, there is space number eight, there, you can see a width of nine feet two inches and on space, number one, you have a width of nine feet six inches. But with respect to spaces 23456 and seven, there are no dimensions in connection with the width. Furthermore, in connection with the depth of each of the spaces, the plan is sufficient on that too, there is a dimension of parking space number one of 18 feet. I'm not sure what that 21 Seven is on to the right of space number two, I'm assuming that it might have to do with the depth of that particular space. But space numbers 3,4,5,6 and seven, I don't see any dimensions with respect to

the depth of those spaces, the way it's configured, I think that with the eight spaces, cars are going to be forced to drive out of the driveway backwards, since the layout of the parking lot is such that cars have no opportunity to turn around. There's a space down in the front of the building. I'm not sure what that's for, it seems to be an extension of the driveway down by the sidewalk. My concern is that might be used as a parking space. And it's my understanding that parking is not allowed in the front yard of a building. Furthermore, I questioned the use of this building, you know, in our town code, we have certain uses that are defined and explained in this proposal. I don't see what use we're dealing with here. And it whatever the use might be, is it allowable, and the district which I think is residential A zoning district down there in Winthrop beach. So, I'm asking the Board to act on this manner tonight. This has been going on for a long time. And I you know, I'm sure the developer appreciates the board's consideration in allowing all these proposals to be presented. But there is another side, and that other side is the opposition, those people who oppose this proposal for a variety of different reasons. And you've heard all the various reasons why these, the construction of a building of such magnitude on this lot has concerns for the abutters and the neighbors down along Winthrop Shore Drive and even throughout the town of Winthrop. So, I'm asking you, Mr. Chairman, to either allow the developer to withdraw the permit or take a vote on it. If the board is so inclined, I appreciate your time.

Sandra Farcaro I live at 45 Irwin street, I just have to tell you, I'm not a big fan of the whole idea of building so far back into the yard of the lot because it's going to be right in my practically in my deck.

Margaret Roberts- I'd like to know if it's going to be anything for below market?

Paula Bono. Okay. I live at 70 Winthrop Shore Drive I'm right next to this monstrosity. Opposing this project.

Kurt Millar- The thing that I'm trying to grasp in my mind, which the previous speaker said was the hardship of this, where they're completely starting from clean slate should be able to adjust to the expected zoning and what's allowed to be there. There should be no reason for them to put in for any hardships or variances when you have the lot and meet what the requirement is. And I know they're trying to you know, get the most bang for their buck, the most profit they can out of it. I mean, that's what it's about. But the hardship aspect, I just keep grasping how and where for the variances, the hardship comes from.

Bob Flaherty- 81 Winthrop Shore Drive Right at this moment, my daughter is out there trying to park her car. And there is no way to park. And you haven't even started that.

John Young made motion to close public comment, second by Tom Chiudina. All three yes to close public comment.

Attorney Lynds addressed Board again. So, we had we heard a few questions or a few comments about the depth of the building, I think it's important to point out that the town of Winthrop Zoning Bylaw requires a setback of 25 feet in the rear. And in this case, we do meet a minimum of 25 feet in the rear, we do have that. So, the depth of our building, although is long, we do also a long lot. We are following the rear setback. So, in as much as we've heard concerns and comments on the depth, I just want to

point out for people that that is not something that we are seeking relief on. In addition, we've stepped the building down. So, the depth even though we are 25 feet from this point here to our rear property line, the building is stepped back for the upper two levels as you go toward the towards the front of the lot. So that was one of the issues that we did hear comments about the second kind of was about the height of the building. We did hear at the previous hearings, numerous comments about this building being too tall. And certainly, we've taken that into consideration. The height limit in the residential A sub district is 35 feet, that our building is now 34 feet eight inches and therefore is below the maximum height limit that is permitted in the sub district. And therefore, while I do understand people's concerns about this being, quote, unquote, monstrosity, or too tall, it is within the height limit that is permitted under the Town of Winthrop by law. The other issue that we did hear about I believe in two speakers involved drainage, this site will incorporate two things one, and I believe Winthrop would also require this for a building of this size. But on-site stormwater management is something that would be for new construction would be included for a project of this size. Essentially what that means is all the runoff for this building, and all the stormwater on site is handled and collected on site and not necessarily just run off the property. That's a condition that doesn't exist today. So ironically, with the development of the site, it's an improvement. So, concerns over drainage and drainage running into other people's properties is something that would be improved or corrected as a result of redevelopment of this particular site. We also heard about some landscaping and we, I believe showed that on the site plan as well, that we do have a pretty good area back here again, the entire rear yard wouldn't be landscaped as well as buffer along the side of the property here and some additional new landscaping that doesn't presently exist on the site for the front portion of the property. So, we do add to that. Some of the other comments that we did here, regarding affordability. If I understood the question correctly, I believe that was a question regarding income restriction or income restricted units. There are no funds that are being provided with respect to this property. Public funds are taxpayer funds that are typically utilized for affordable housing projects. This project is being entirely funded by private investment, and private risks. So, there is no component that there's any requirement for affordable housing units on the site. And the intention here is to include these all at market rate. So, if this were approved and built, all these units would be market rate. Now, does that mean that they're all entirely unaffordable? No, because we do have varying sizes of units. And based upon what the market is for the area, these would be priced accordingly. These aren't all you know, very large, three, four-bedroom units. These are relatively smaller one- and two-bedroom size units. So, depending upon the market, that's where this would fall. I like to respond also to some of the comments that we did hear from Attorney Donohue. First, the issue on notice, I'm not sure that Mr. Donohue represented the abutting property owners have the right. If he's here objecting on behalf of the DCR. As to the notice requirements, I perhaps ask for the state that otherwise, I don't know even know that it's his position or place to object to a notice requirement for some other party. If the Department of Conservation Recreation feels that they were not provided appropriate notice of this meeting, that's for them to object to not necessarily Attorney Donahue. I would also point out that with respect to the dimension of spaces, he had some concerns that appear to be confused over the dimensions that are shown on the plan. Typically, when a site plan is prepared, we don't necessarily have the name label every space, especially if every space is the same width. In this case, all the angled spaces are being shown and the illustrations being shown as nine feet two inches, if you carry that along to each of the spaces, I believe the plans are scaled as well. So, if you use a scale,

you can certainly review and estimate what the size of the spaces are based upon the scale. In addition, when you do have a space of some different width, as is the case for parking space one, you show that nine feet six inches. So again, these are being shown to for purpose of illustration of depth and width. If the board feels it's necessary to label each spot, with the width and depth, we can certainly have that done. But in my experience based upon reviewing plans, it is not uncommon for a dimension to be included on more than one space. It's certainly illustrative of what the space sizes are. If there is a difference in the size spaces, then certainly you would add a different dimension, as was the case with parking space one. With respect to the other comments that I did here, related to whether this board has jurisdiction to hear this, I suppose that's up to the board to decide. But I feel that it's entirely appropriate that if plans do change during the hearing, which is something that is not uncommon in practice, before zoning boards, I'm sure as both the chair knows, as well as Attorney Donahue, who that it is prudent to request further review from the billing department to determine whether other relief is necessary. And certainly, if other relief is necessary and required that you want to have a public notice appropriately identifying what that is before the board takes further action on it. That's exactly what we did in this case. And I don't think that there's any reason to question whether that approach is appropriate or not. Because quite frankly, if public notices something that attorney Donahue, he was concerned about, that we certainly should have the appropriate public notice for what the board is being asked to consider. And I believe that that's exactly what the process was. With respect to the actual parking spaces. I think there was some common concern over how the maneuverability would work. I believe and correct me if I'm wrong, Mr. Chairman, I don't believe the zoning code has any specific requirement for maneuverability when it comes to the direction in which a vehicle must enter or exit a particular property. Vehicles could back into their spots, and they could drive into the spots knows first how they back out of the spot and how they achieve access to the public way, is something that we've actually thought about, if you look here, we do have a radius area here. So, for vehicles backing down, they do have a spot where they can back into and then back out into the hard drive out to the street, or they can pull into here and back into one of their spots. So that is something that we did consider. And that was part of the conversation that I believe that we were asked to consider at one of the previous hearings. So each of these vehicles although they would back out of their space, they do have enough room for turning radius to pull in and make a maneuver out on shore drive which is a much safer approach to the street than backing out and we don't expect vehicles to have to do that if people choose to do that, just like anybody else with the driveway, including the current driveway that exists on the property today, people can back out onto the street. There's no prohibition to doing that. And I do want to point out that that was something that we did consider when creating this turning radius area here. I Don't believe I don't believe there any other specific comments unless the board believes that there's something specific further that I need to address. But those are the responses that from the comments I did here tonight, based upon the issues that we believe were outstanding.

Chairman Baird- I think you hit them all these the ones I was tracking? I would say that I would confirm that there is nothing in our ordinance that deals with maneuverability out onto a public way. Certainly nothing that prohibits backing onto a public way from a driveway, because if that were the case, almost every home in Winthrop would be illegal. And I assure you that is not right. Unless you have unless you're unless we all have large estates with circular driveways, we're back in in somewhere. Right. So

that's one, two on the notice piece. There was a question, you know, the question about whether a new denial letter was required or whether there should be new notice. I think it was appropriate, as you stated Attorney Lynds to be noticed, given the new relief requested. And I think that is appropriate, and frankly, the right form, and it was asked of the clerk and the clerk agreed that yes, we should be re noticed. So that notice was proper. And I would say that that should be done. In any case, when new relief is added midstream. So, I don't think there's a procedural defect. The DCR issue to me is that DCR is not here to raise the issue. I don't expect it show up. But with that, I guess I'll open it other questions from the board? Or comments from the board?

Tom Chiudina- Attorney Lynds, I agree with nearly everything you responded to in your response and commend the elegance that you do it. But up until the point of the parking, that's where I guess I'm not on board. This is half the amount of parking. And although you did provide that turnaround space, that turnaround space is not sufficient for these cars to turn around and would probably not likely be used. And although I understand that there is nothing in the zoning that requires specific maneuverability. And I certainly respect Chairman Baird's property and his own maneuverability to get on and off what the Washington at that's at that point. He's in a single-family house. This is an eight-unit structure with eight parking spaces. And not only is it half, which means you're putting the other half out on the street. But I think that this these spaces would not be used on a regular basis if people can be parking in the street, which they will do. So, for all of that, I just am not convinced that this is not detrimental to the neighborhood.

Attorney Lynds responded. I certainly understand the point about parking and the concern over maneuverability. And again, we looked at this, specifically because of that concern, as to, you know, how this works and if you believe that people will not use the spaces I don't, I don't know what that's based on. I feel that if you purchase a condo unit and you have an exclusive use parking easement, why wouldn't you use it? I mean, I don't think parking on the street would be your preference. As to you know, again, we are asking for relief on the number of spaces, but I think there's some distinctions here that need to be considered with respect to why we're asking for the relief we're asking currently, you have a three-unit building. Currently, we're looking at a three unit building with the parking area to its left and I wouldn't know that people currently would back out onto the property. This is a rental property. I'm sure as the board is aware, there is not even though there's a minimum number of parking spaces that are required for, for new units being proposed and the numbers to I don't believe they're for this current building with three units, I don't believe there are six available parking spaces currently, with this building getting a rental, again, as the board I believe, would concur. There is no limit on the number of vehicles that could be associated with this building by the tenants who may occupy it. So, assuming and I asked the board to make this assumption, assuming that this were leased to a number of roommates, if you will, which is permissible under our code. Each one of those roommates could own their own vehicle, or rent or lease or what have you, or have access to a vehicle. And there is not currently enough parking, that would satisfy the number of occupants that could occupy this building presently. So, it's not as if we're dealing with a condition of a vacant lot that has no use, we're dealing with a condition of an existing use, that is already non-conforming, that is likely already impacting the parking in the area, our proposal would involve owner units or condominium units, that each would

have one space assigned to the unit. And that's important, I think it's a critical factor in the board's consideration and granting a variance on parking. This is not being proposed as a rental isn't being proposed as ownership. And people who look and just I'm sure Mr. Young can agree with this, people who look to purchase properties, where off street parking is critical. You know, if I have two cars, I need off street parking for two cars, and this condo does not offer that to me, then that's a factor in consideration in my search for a unit. And that's likely to be something that I would take into consideration. So, the market certainly will dictate the type of purchaser and the number of vehicles that will be associated, not the case, in a rental situation, people tend to rent exactly what they need don't necessarily have those considerations if the rent is right, or that fits their financial profile, and they have two cars. You know, that's certainly how it's going to work. Whereas you're making an investment in a condo that only comes with one parking space, there's consideration that's going to happen. So, I just I think it's important to consider that we do have an existing condition presently, that is non-conforming when it comes to parking. And that is unlimited, if you will, it's the number of vehicles that could be associated with this property to allow us to change the use from the current scenario to the proposed scenario. I'm not guaranteeing is a better situation but certainly cannot be worse and or potentially improve it. And that's why we're asking for the relief for the for the number of parking spaces.

John Young-I just want to let attorney Lynds know that. He's answered all our questions. He's made a lot of changes over the last three meetings. And I'm like, Tom, I'm trying to wrap my head around the park you know, on this development and is it the thing that is most concerning to me with going forward on this project? And you're very eloquent on your response there but I'm just trying to wrap my head around what's going to be done to the neighborhood allow for the extra parking

Attorney Lynds- Thank you Mr. Young's comments. I certainly understand, again, the concern over parking. Um, you know, and I know that's not relevant to the conversation tonight, it's more of a larger policy question and concern that I think a lot of cities and towns are dealing with, you know, and that's multifamily housing in towns that are serviced by public transit. And, you know, I'm sure this board's aware that, you know, the move is to look towards towns that don't provide for, you know, multifamily zoning districts or multifamily housing opportunities, especially those that are serviced by MBTA or MBTA affiliates. Winthrop is no exception to that. And I believe that, you know, this is something that is exactly what you know, the governor and the legislature was aiming at is that we're trying to saddle developers and people who are looking to develop property for multibillion purposes with requirements like two parking spaces that, you know, quite frankly, may not even be the norm 1015 20 years from now. So we're building hopefully, for the future and the way that the people are going to live in the future, and to simply, you know, ignore an opportunity for multifamily housing, because you know, it doesn't have the two parking spaces that are being, you know, currently proposed under your zoning code, or call your partner's zoning code seems to miss an opportunity for addressing a need in communities like Winthrop. And I know that's an unpopular opinion with people who are butters and support developments. But I think that, you know, approaching this from a, it doesn't have enough parking, is this counter to the thinking for urban planning and urban policy.

Attorney Lynds- So I understand the question correctly, it's a question of lot coverage. I don't believe we were; I don't believe the building inspector inside of us for any, any issues related to lot coverage. But I'm happy to get an analysis on what that looks like. This isn't all dedicated to parking, this entire gray area here is landscaped area, new landscape there in the front. There's a buffer here, obviously, between the property line on our right and our building, and we have additional buffer along this side here as well. So, while we do have a lot coverage, we don't, we don't cover the entire lot with parking or the building. We are also and I didn't address this last time, Mr. Chairman, we also can explore I think we mentioned this, or somebody had asked this at a previous meeting about permeable pavers are permeable paver system that works very well with the type of onsite stormwater management that we're anticipating will be included with this project. So that is something that also can be added. And certainly, from a resiliency and sustainability standpoint, we could easily include with this project, something that doesn't again exist today. It's a partially paved somewhat open towards the rear, but not something that that exists today with respect to the parking area.

Chairman Baird- This is a residency A district. And residence, a district does not have within its base zoning, as from a district perspective, any limitations on maximum lot coverage, so that that is true, right? A multifamily district would, but the use doesn't carry with it, the district from which in which that use could be made. So, sort of this doesn't convert it to a multifamily district property. Now that said, you know, as part of a variance decision, you can always condition things to have certain things and not suggesting that that's what we do here. But there isn't a 30% requirement that applies to this property, because it's not in the multifamily district. So that's just as a point of information, I guess, where this is my biggest issue with what I'm what I'm looking at. And I said this last time, and I still feel very much this way is when I look at this lot. And I look at the current use of this law. And I think about the project, and I think the project is I think it's a I think it's a great design. I think that I like the design, I like the like the site plan, the parking, I'm not crazy about it come back to one question. And that question is, what is it about the shape of this parcel or something about this parcel that's unique, that creates a substantial hardship that would allow us to grant those, this these variances and that's, that's the question I have is what is it? What is it? How is how is there a hardship appear if we don't allow the variants based on something related to the property? Because that is the standard under 48. And that's where I struggle with this one and I don't by the way, I don't Want to struggle with this one because I like I think it's a good-looking project. But we're sort of bound by 48 10. And that's what I'm, that's what I'm wrestling with Attorney Lynds now.

Attorney Lynds- Thank you, Mr. Chairman, and just I'll try to respond to that briefly. Um, so a couple of things I did mention earlier. And, and I think that someone who's practices for a while is full stack and the chair that you said, um, I think hardship, you know, is something that, you know, you have to look at case by case, and in the context of what we're looking at, if this were a vacant lot, um, I think we approach it a lot differently, we do have an existing condition that is non-conforming, and it's non-conforming, both use and dimension. While we cannot conform, or at least the way we design it, and just the way the design of the building works, when because we certainly would, no matter what we built here, if we conform to the side yard setback, we probably limited on how we park on the site. If we

conform to the front yard, I suggest that the building probably would look out of place for the buildings along that side of the street. So, while there's a 20 foot setback requirement, it doesn't necessarily work. When you look at the context of what's there. We are proposing improvements to the non-conformities we're not achieving 100% compliance. But I think that, you know, by us approaching this in a way that addresses some of those nonconformities makes them better, there's certainly some merit to the argument as to, you know, the purpose or the purpose and intent of the code is to not have these non-conformities exist forever, or at least to try to improve or not making them worse. And that's how we're approaching this. I understand that from a hardship standpoint, you know, parking is going to be a concern. But I think also, as the board, and many other boards, look at these issues. You know, if we were to propose even a four unit building on the site, which is one more than there now, the eight parking spaces that we're proposing would be essentially the number of parking spaces that we would have to comply. And what does that do, by way of the project, a four-unit building, and I know we're not talking about, you know, changing this to a four unit building tonight. Or if that's even something that's possible, but if this were a four unit building, let's say to prove then have you had the parking spaces, does that change what the concern is of the board as well as the neighborhood, a four unit building that complies even more so the code could possibly be a rental building, we could revisit the opportunity here to have larger units with you know, a roommate situation rather than a family situation or, you know, starting out smaller, you know, smaller household situation. And if that were to occur, all the concerns over your parking would be exactly the same or if not worse, as I said, you know, the current condition now with three units, there is no limitation just because the zoning code says you need to have two parking spaces, it doesn't mean somebody can have can't have three cars, or you know, four cars per dwelling unit. The zoning code just says that's the guy that's two spaces per unit, and so be it. But I think the zoning codes, you know, ignore a lot more reality. What happens? I know the response; everybody's everybody has two cars. Not true. Not everybody has two cars. A lot of people have no cars. And I'm not saying that this building, if it's approved and built at eight units that nobody will have cars. But to simply say that just because the general thinking is everybody has two cars is really ignoring you know what else exists and how people live these days. I so I feel like there are issues that can be reviewed in the context of the area, what we're looking at from a neighborhood perspective, as well as what the reality is of how living and people live these days, as opposed to you know, what the zoning code the black and white of the zoning code says. So, I feel that, you know, there are reasons for the board to consider this proposal. And to consider the number of parking spaces in relation to number units we have, we're not proposing, you know, large three, four-bedroom units here where, you know, you certainly can have those concerns, but we are certainly proposing some smaller units including one bedroom, where chances are you may have single, single occupancy households. And that's something to consider when considering whether or not the parking is adequate and whether or not the parking program excess?

Chairman Baird- Yeah, and to be clear, I'm not I mean, like the parking is an also ran for me. I think it's just so I understand that certain conditions of the front side yard are being made better by this project but still require relief. Um, I think it's the idea that the sort of the scale of the building it's not even about the number, not necessarily that about the number of variances, I think, to me, it's the heart. If you told me the soil shape and topography of the lot, there was something unique about this lot, that

doesn't affect other parcels generally in this district. And because of that, you needed three variances to build a use that's allowed or a use that isn't allowed. You know, I guess that's one thing. But here, I guess I'm just what I'm struggling with is the underlying variance standard, which says that there has to be something unique about this property that causes a substantial hardship, that if we don't grant the relief, would be a substantial hardship to the owner. And, to me substantial hardship, because the owner can't build eight units where they currently have three and get variances, when there's really nothing remarkable about the law, it just feels at odds with the variance standard in the Commonwealth. And that's just, that's where my head is. It's that's what that's where I am on this, and I just that's just I don't, I don't see, not getting eight units is a substantial hardship based on the SWOT. That's, that that's where I am. I don't know where other board members are. But I just, I'd rather shoot you straight on this. That's where I am. And I know that, I don't want to any, I don't think it makes sense to say, because of cost and expense and time, you know, try again, try again, try again, because it's great that you keep you know that looked at this a couple different times. And I think that this is a better project and feels better for the site. But I'm not sure how you get to that standard. That's what I'm wrestling.

Attorney Lynds - I have my zoning slap here, just quickly, I think parking is probably the only one that is, you know, a sale of real concern in the sense that you have a preexisting non-conforming use now with a three family so that doesn't go away. So, looking at it from a just what doesn't conform on the site that's already there. We can't do anything about the lot with that's always going to be there, regardless of what happens. So those are two issues that just really don't necessarily I'm not saying that they don't require a leaf, but they are conditions that we don't assuming we left the building there, those are two conditions, we just can't change. We can if we left the building there, we couldn't change the side yard or front yard compliance either. So, we are proposing to improve that condition and, in some respects, almost complying with the front yard requirement. And I was I would submit that I would submit that the that the shape of this lot creates somewhat of a hardship on compliance with the front yard requirement, because we do have that sort of non-parallel front and rear yard or perpendicular with side plotline. So, the way that the front A lot goes from left to right, you'd have to orient your building in a way to you know, have a full 20-foot setback. And I believe that we're, you know, we're almost at compliance for a good portion of that we're at about 17 feet. But with that said, we're, you know not out of character with what exists on Winthrop Shore Drive for setbacks. I mean, the building, I believe, is where I left is at the sidewalk. So, we're, you know, we're not that far off. So really, it does come down to parking, when you're looking at what, what real relief is, is going to be necessary. We've done, in responding to what we heard from the neighborhood and the board, bringing the height down and ensuring a rear setback room that were two things that, you know, we obviously have a lot of control over and we did that, but I think that you know, requiring 16 parking spaces for eight units and whether it's, you know, 12 spaces for six units or whatever the case may be, you still have a non-conforming use and the property would that doesn't have a conforming parking program now. So, we would be you know, arguably improving that condition.

Chairman Baird- Yeah, I mean, it's into this table is helpful because it does clarify for me that as it relates to width, yard, lot size, you know, I hear you on that because I think there's only so much you can do even with a building that is if you had three units, right, so that's one thing, I think, going from a non-conformity three family, which is technically a multifamily use to a non-conforming eighth unit. And then intensification of the use is not the same as the other changes that are more compliant or within the same realm of noncompliance. Because if you weren't, if you were just in that building, say that you had three and you were going to four, and you were looking for and say that you can't really do this in winter, but if that were the case, and you were saying I'm going for an extension of a preexisting nonconformity. Um, that would be an extension of a preexisting nonconformity. Right. So here, it's not apples to apples in that regard. And that's what's driving, I guess, pun intended, the parking issue? those two the two issues that I had the biggest issue, the things that I had the thing that I had the biggest issue with they're related to one each other, they're inextricably tied, right? So, it's, I mean, you could say, well, if I had four, I need eight parking spaces. To comply. That's true. But most families don't have three cars. And I agree, look, everybody, some people don't have cars, some people have to some people have one, it just depends on the preference of the person, there's no way to know that until you build it and market it. Right. That's not, and we can't put a condition in a decision that says, you can't get a resident parking pass. Good luck enforcing that, right. So that's not feasible. So, for me, it's the hardship that has to do with the intensification of the use. Changing it from a non-preexisting non-conforming three family to an eight family is where I have a hard time of hardship. The other things I think, look, there's there are some uniqueness's with this law, the non-perpendicular nature of it, you got weird angles, you're doing the best you can, I can be convinced on those. It's the intensification the use that I think is just a bridge too far for me. So those are the only questions and comments I had I you know, I again, I think the problem that I often have with these is I love the architecture. And you know, I also do a lot of development work for a living. So, whenever I do wrestle with this stuff as Attorney Lynds, I'm sure can appreciate anything further from the board.

Tom Chiudina- I'm just going to add that regarding the architecture, although the front is in character with many other buildings along Shore drive, and I don't mind it. I think the length and depth of the side yard is not great at all. That's offensive to the neighbors, frankly, to have something like that. There may be other properties that have similar but that doesn't make it right or doesn't make it acceptable. Those a lot of those other buildings have been there for 100 years before zoning was what it is today.

Attorney Lynds- I'm just I would point out that, you know, again, if we're looking at changing the use or the building itself, even there is an as of right scenario that allows us to have length of the building. We don't, yes, it's an exceptionally long lot. And we don't have a setback violation on the rear so we could push the building back further. I mean, the shortness of the building wouldn't necessarily come from the rear would come from the front. So, the building would be, you know, shorter, but it was still the depth of it is still compliant. So, I just I understand what you're saying about it seems you know that it's long, but it's compliant in the rear. It's the front that would be you know, would require some modifications

Chairman Baird- I'll entertain a motion whether it's to continue to consider or take a motion actual dispositive motion. I leave that to members of the board.

Attorney Lynds- Mr. Chairman, if I may, and in hearing the board's comments this evening, you know, I think that, and we appreciate the time the board has spent on this. I know, this is not, you know, this is not a waste of everybody's time. I feel like this is a process. And I feel like, we're in a place where we we've heard the board, we've heard the neighbors, I'm inclined to, rather than have the board vote on it, I'm inclined to have my recommend that my client withdraw. If that can be done without prejudice. Obviously, we have some ideas or plans for the site, I feel that we may want to come back with something new, it's obviously not going to be this project are the size of project. But I would prefer just for purposes of clarity for my client, I think it's probably appropriate that we withdraw it the board is willing to grant that request without prejudice.

Chairman Baird- I leave it to the board members if someone wants to make a motion to allow the applicant to withdraw without prejudice.

Tom-but Darren before we do that, just for the sake of the public, who has been listening? Who has asked several people to have asked, you know, why are they still in front of us? And could you explain to them that this is their right, and not what it means to allow it without prejudice?

Chairman Baird- Thanks, Tom. It's a good point. I appreciate it. You know, so as we've gone along in this process, and yes, we've had three substantive hearings on it. It's been on our docket for a while, I think the applicant has been responsive as we've gone on here to questions. And that's why we have continued to sort of continue to continue. I think we're at a point now where given the comments tonight, a continuation does not make sense. So, there's one of two ways that those one of two things that can happen, the board can entertain a motion, such as the one Attorney Lynds may can to withdraw this matter without prejudice. Or we can make a dispositive motion to vote on the case, either yes or no. if we grant the motion to withdraw without prejudice, it means that the applicant can refile a new application at any time and be before the board on a new project. If we were denied that and say you can withdraw, but only with prejudice, it means that as a technical matter, there'd be a period, two years where the applicant couldn't reapply for this project, this exact project, if they made material changes and came back with something different, they could apply anyway. So, there is in my mind, I don't think unless I'm wrong, if we grant the right to withdraw without prejudice, that the intention of the applicant would be to come back with the exact same projects. I think the applicant can read the tea leaves that probably get just favorable treatment at that hearing. So, and, you know, in to the, to the extent that we were to have a motion to make a decision substantively on this matter, yes, or no? Yes, we mean, the project happens. A no would mean this project doesn't happen. But that doesn't mean the applicant can't revile a substance substantially or materially different project in the future for our consideration. So that's Really what we're talking about here, and, you know, I think a motion to withdraw without prejudice means yes, they can come back at any time they could file, arguably, tomorrow, and beyond for our main hearing. And we could be here, but I don't think that's the intention here, at least if I'm wrong, then shame on me. But I don't think that's the intention. And if it was, if that is what happened, we would then take it back up on the merits, and I think at that point, make a

dispositive decision. So that's the decision to withdraw is always the applicant's choice to request. We never ask an applicant to withdraw matter. And that request has been made. And so, with that explanation, I think it's without request out there. I will take a motion if a board member wants to make it on the request to withdraw without prejudice and see if that carries and if it doesn't carry then we'll see where else we end up from a motion perspective. So, Mr. Young, Mr. Chiudina. If you want to offer up a motion on the request to withdraw without prejudice, I'll be happy to entertain.

Tom Chiudina-Mr. Chair, I'll make a motion that we accept the applicants request to withdraw without prejudice.

Chairman Baird-As moved by Mr. Chiudina, do I have a second Mr. Young? I second the motion. Okay. As moved by Mr. Chiudina and seconded by Mr. Young, all those in favor of the applicants request to withdraw without prejudice. Vote by roll call. Darrin Baird. Yes. Tom Chiudina- Yes. John Young. Yes.

Chairman Baird- Okay, so the applicants request to withdraw without prejudice has been granted. Attorney Lynch, thank you for your presentation. And, you know, your continued dialogue with not only the board but the public on this matter. I'm sure we'll see this applicant at some point in the future. And to the members of the public who have been here tonight, as well as attorney Donahue, who's here, you know, speaking for one of his clients, we really do appreciate the time of the public and attending these meetings and being thoughtful in their remarks because they are important, and it's important in in this sort of dialogue and discourse to have those comments. So, we appreciate you sticking, sticking with us in, you know, this one, at least this was only one meeting, the only one matter on tonight. So, you know, people could stick with it and have the bandwidth to stay with it. Not six things and this is sort of in the middle. So, we do appreciate everybody staying on tonight. In thank you for your participation. Um, with that. I will take a motion from any board member to adjourn this evening's meeting. There, I make a motion to adjourn. Okay. Motion to adjourn at 8:06pm by Mr. Young. Do I have a second? Second? Second by Mr. Wright as moved by Mr. Young and seconded by Miss Dwyer motion to adjourn approval by roll call all yes votes.